Harcharan Singh s/o Santokh Singh v Nashir, Johal & Co (sued as a firm)

HIGH COURT (KUALA LUMPUR) — SUIT NO S2(S1)–22–563 OF 1997
KAMALANATHAN RATNAM J
19 APRIL 2001

Civil Procedure *— Discovery — Inspection of legal firm's files — Claim for commission for files introduced to legal firm — Firm failed to provide list of files introduced by plaintiff — Burden not on defendant to ascertain files — Whether plaintiff ought to have instead sought inspection of register of files of defendant firm*

The plaintiff appealed against a decision of the court given on 2 March 2001 allowing the defendant's appeal (in encl 22) with costs. The plaintiff was a legal assistant in the defendant legal firm and one of the terms of employment was that the defendant would pay the plaintiff a 30% commission on each file introduced to the firm by the plaintiff. The plaintiff's claim, inter alia, was that he had not been provided with the list of the files that he had introduced. The plaintiff, who represented himself, gave evidence that he had not sought an inspection of the register of files of the defendant from which he could check the files he had introduced to the defendant. Subsequently the court discovered that what ought to have been the appeal was encl 18 rather than encl 22.

Held, allowing the defendant's appeal:

(1) This was a clear case where the plaintiff, instead of availing himself of a simple procedure to resolve this issue of ascertaining the files he had introduced to the firm, had sought to throw the burden on the defendant (see p 67C).

(2) The court would treat encl 18 as the enclosure heard on 2 March 2001. Enclosure 18, which is the defendant's appeal against the order of the learned senior assistant reistrar made on 12 May 2000, was allowed with costs and the order made on 2 March 2001 allowing the defendant's appeal against encl 22 with costs, was vacated (see p 67G–H).

[Bahasa Malaysia summary

Plaintif telah membuat rayuan terhadap satu keputusan mahkamah yang diputuskan pada 2 Mac 2001 yang membenarkan rayuan defendan (di dalam lampiran 22) dengan kos. Plaintif adalah seorang pembantu undang-undang dalam firma guaman defendan dan salah satu daripada terma pekerjaannya adalah bahawa defendan akan membayar kepada plaintif komisyen 30% untuk setiap fail yang diperkenalkan kepada firma oleh plaintif. Tuntutan plaintif, antara lain, adalah bahawa beliau tidak diberikan senarai fail-fail yang beliau telah perkenalkan kepada firma defendan. Plaintif, yang mewakili diri

sendiri, memberi keterangan bahawa beliau tidak membuat satu siasatan ke atas daftar fail-fail defendan di mana beliau boleh memeriksa fail-fail yang telah beliau berikan kepada defendan. Selanjutnya mahkamah mendapati bahawa apa yang sepatutnya satu rayuan adalah lampiran 18 dan bukannya lampiran 22.

Diputuskan, membenarkan rayuan defendan:

(1) Ini adalah kes yang nyata di mana plaintif, daripada mengikut satu prosedur yang mudah untuk menyelesaikan isu mengenalpasti fail-fail yang diperkenalkan olehnya kepada firma tersebut, telah sebaliknya mengalihkan beban tersebut ke atas defendan (lihat ms 67C).

(2) Mahkamah akan menganggap lampiran 18 sebagai lampiran yang didengar pada 2 Mac 2001. Lampiran 18, yang merupakan rayuan defendan terhadap perintah penolong kanan pendaftar yang arif yang diputuskan pada 12 Mei 2000, telah dibenarkan dengan kos dan perintah yang diputuskan pada 2 Mac 2001 yang membenarkan rayuan defendan terhadap lampiran 22 dengan kos, telah dibatalkan (lihat ms 67G–H).]

Notes

For cases on discovery generally, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1569–1605.

Harcharan Singh (*Harcharan S Sidhu & Associates*) in person.
Mohd Nashir bin Hussein (*Nashir Johal & Co*) for the appellant/defendant.

Kamalanathan Ratnam J:

Facts

This is the plaintiff's appeal against my decision given on 2 March 2001 allowing the defendant's appeal with costs. On that date, the cause list showed that the appeal fixed for hearing was encl 22. Enclosure 22 was the defendant's appeal against the decision of the learned senior assistant registrar ('SAR') given on 6 June 2000 dismissing the defendant's application (encl 20) for a stay of an order made on 12 May 2000, which was to direct the defendant to furnish to the plaintiff within 30 days, an affidavit verifying its list of documents together with the list of documents and which documents had been referred to in paras 5, 7, 9, 10, 11 and 12 of the statement of claim and for an inspection of such documents within 30 days of the service of the said list of documents (encl 16).

Findings of the court

At the commencement of the hearing of the appeal, both counsels confirmed as recorded by me that the hearing was in respect of encl 22 as stated in the cause list. As is my usual practice, I confirmed from the parties

and recorded the fact that encl 22 was indeed the appeal from encl 16. Both counsels made their submissions. The plaintiff was a legal assistant in the employ of the defendant legal firm and one of the terms of employment inter alia was that the defendant would pay the plaintiff a 30% commission on each file introduced to the firm by the plaintiff. The plaintiff's claim, inter alia, is that he has not been provided with the list of the files that he had introduced. After hearing their submissions wherein the defendant said that he had complied with the order to file the list and the affidavit and the plaintiff contending that the defendant had not, I asked the plaintiff, who represented himself, if he had sought an inspection of the register of files of the defendant from which he could check the files he had introduced to the defendant. Mr Harcharan Singh replied that he had not. To my mind, this is a clear case where the plaintiff, instead of availing himself of a simple procedure to resolve this issue of ascertaining the files he had introduced to the firm, had sought to throw the burden on the defendant. After all, if Mr Harcharan Singh had only inspected the register of files that is maintained by every law firm as a record of the clients and the dates the clients were retained, surely it would have been open to him to have recognized the clients he had introduced. On this score, I allowed the defendant's appeal against which decision Mr Harcharan Singh has appealed.

In the course of writing this judgment, I checked the relevant enclosures. In actual fact what ought to have been the appeal on 2 March 2001 was encl 18. This was the relevant appeal by the defendant against the order of the learned SAR made on 12 May 2000, which was the appeal against the dismissal of encl 16. This confusion of the enclosures would not have occurred if both counsel had been vigilant and had corrected the cause list to read encl 18 rather than encl 22.

In actual fact the notice of appeal (encl 22), was indeed wrong as it contained a notice that the defendant was appealing against a decision given on 6 June 2000 (which was a dismissal of the stay application), whereas encl 22, the notice of appeal ought to have stated that the appeal was against the order made on 12 May 2000.

On 13 April 2001, I called both counsels to see how best this confusion could be resolved. Both counsels apologized for their error and urged me to treat encl 18 as the enclosure that was heard, as strictly speaking, the submissions by both counsel were in respect of encl 18. I therefore confirm that this court will treat encl 18 as the enclosure heard on 2 March 2001. Enclosure 18, which is the defendant's appeal against the order of the learned SAR made on 12 May 2000, is allowed with costs and the order I made on 2 March 2001 allowing the defendant's appeal against encl 22 with costs, is vacated.

Defendant's appeal allowed.

Reported by Wong Ee Lynn